

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 76 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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KISHOR LALLUBHAI TANDEL

Versus

STATE OF GUJARAT  
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Appearance:

1. Criminal Revision Application No. 76 of 2002  
MR YASHWANT S BAROT for Petitioner No. 1  
Mr K G Sheth, APP for Respondent No. 1  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/03/2002

ORAL JUDGEMENT

The present revision application under section 397 read with section 401 of the Criminal Procedure Code, 1973 (for short, 'the Code') has been filed by the petitioner-original accused before the learned Judicial

Magistrate First Class, Navsari in Criminal Case No.6080/98.

2. It was alleged against him that on 8.9.1997, the concerned PSI had carried out raid in respect of his residence under Jalalpur police station, Navsari and during the course of the said raid, more than three hundred bottles of foreign liquor were found from the said house of the petitioner. One of the bottles was sealed and all the bottles containing illicit liquor were seized by the concerned Police Inspector under panchnama in presence of two witnesses. The sample was sent to the Chemical Analyzer and it was found to be foreign liquor. After investigation was over, the petitioner was charge-sheeted before the trial court and he was supplied with copies of police investigation papers. His plea was recorded before the trial court on 1.9.1998. He pleaded not guilty and, therefore, evidence was recorded and after conclusion of evidence, his further statement under section 313 of the Code was recorded by the trial court on 15.6.1999. Arguments were heard and at the end of the trial, the trial court found that the prosecution had proved the case and it also proved that foreign liquor was found from the house of the petitioner and accordingly the petitioner was convicted for the said offence and was sentenced to suffer S.I. for three months. He was directed to pay Rs.500/- in default of payment of fine, he was required to suffer further S.I. for three days. Feeling aggrieved by the said judgment and conviction order dated 20.6.1999, the petitioner preferred criminal appeal being Criminal Appeal No.47/99 before the Court of Sessions at Navsari. The learned Addl.Sessions Judge, who heard the appeal, dismissed the same by judgment and order dated 22.10.2001 and confirmed the judgment and conviction order recorded by the trial court.

3. Feeling aggrieved by the said judgments and conviction orders recorded by the two courts below, the petitioner has preferred this revision before this Court. The petitioner has contended before this Court that the FIR produced on record did not bear signature of the learned Magistrate who tried the petitioner in the aforesaid criminal case. That there is material contradiction in the evidence of the PSI and the Head Constable and, therefore, the two courts below should not have relied upon the evidence of these two witnesses. That the panch witnesses have turned hostile and, therefore, the evidence of police witness only should not have been relied upon by the two courts below. That the independent witness was available and he was not examined

and, therefore, there is material lacuna in the case of the prosecution. That the prosecution has not proved that the house from which the muddamal liquor was found belonged to the petitioner. That therefore, the trial court has committed material illegality in convicting the petitioner. That therefore, the present revision application be allowed and the judgments and orders of the two courts below be set aside.

4. I have heard the learned Advocate for the petitioner and Mr K G Sheth, learned APP for the State of Gujarat. They have taken me through the evidence on record including the FIR and panchnama.

5. Learned Advocate for the petitioner has drawn my attention to the xerox copy of the FIR which is produced before the trial court at Exh.11. It transpires that the said FIR was admitted in evidence during the course of the evidence of the complainant, PSI Mr Desai. When it was proved before the trial court, it was exhibited at exh.11 and endorsement has been made to that effect. However, that endorsement has not been initialled by the learned Magistrate. There cannot be any dispute with regard to this because the xerox copy has been produced on record at Annexure 'C' to this petition by the petitioner. However, it is not the case of the petitioner that the FIR was not produced on record and it was not proved before the trial court. Moreover the informant has been examined before the trial court and his evidence has been considered by the learned Magistrate as well as by the learned Addl.Sessions Judge. Therefore, simply because the Magistrate has omitted to put his initials at Exh.11, it cannot be said that the FIR should be thrown away from the record since it cannot be said that it has not been properly proved in accordance with the provisions made in the Evidence Act. This is not a matter fatal to the case of the prosecution.

6. Another aspect of the case is that as per the evidence of the original informant PSI Mr Desai, one bottle was sealed by placing paper slip containing signatures of panch witnesses. At the same time, the Investigating Police Officer deposed that all the bottles were sealed by placing paper slip as aforesaid. Learned Advocate for the petitioner has, therefore, argued that there is apparent contradiction between the evidence of the informant Mr Desai and the Head Constable who is the Investigating Officer in the present case. At the same time, we have to read the evidence as a whole. It is true that there appears to be one contradiction as

aforesaid. At the same time, the panchnama produced on record clearly indicates that only one bottle was sealed with paper slip containing signature of the panch witnesses. Same way, even the FIR Exh.11 supports the evidence of the informant Mr Desai.

7. It is required to be considered that muddamal bottles were seized by the police on 8.9.1997 and the evidence of the witnesses was recorded on 13.4.1999. Therefore, there was a gap of nearly 18 months and, therefore, the Investigating Police Officer who was the Head Constable at the relevant time, may have omitted to remember some minor aspects of the case. However, when the evidence of informant Mr Desai has been supported by the evidence of panchnama and the evidence of FIR Exh.11, the above minor contradiction can be omitted from consideration. It, therefore, cannot be said that there are material contradictions on material particulars going on to the root of the case of the prosecution. Therefore, these contradictions cannot be considered vital and fatal to the case of the prosecution.

8. Another aspect of the argument of the learned advocate for the petitioner is that the panch witnesses have not supported the case of the prosecution. There is no law that when the panch witnesses do not support the case of the prosecution, the evidence of police officers is required to be rejected outright. The two courts below have found it proper to rely upon the evidence of two police officers. They have found that their evidence inspired confidence and therefore, their evidence should be relied upon. This cannot be said to be an illegality in appreciation of evidence. Therefore, even this point raised by the petitioner cannot come to the rescue of the petitioner.

9. Learned Advocate for the petitioner has also argued that the independent witnesses who were available have not been examined. It is a fact that the raid has been carried inside the house of the petitioner and therefore, the witnesses who may be around the said house cannot be said to be eye witnesses. When the police would carry out the raid in respect of a house, ordinarily entry of strangers would not be permitted. At the same time, strangers would not like to enter such a house when it is being raided by police officers. Therefore, when no independent witness was present in the house, it cannot be said that there was availability of independent witnesses when the raid was carried out. Therefore, even this point does not help the petitioner.

10. Learned advocate for the petitioner has lastly argued that the prosecution has not proved that the house from where the muddamal bottles were seized belong to or was in possession of the petitioner. The two courts below have recorded concurrent findings of fact that it was the house of the petitioner and he was in possession thereof and there is no reason for this court to take a different view from the view recorded by the two courts below. It is required to be considered here that the petitioner was actually present in the said house and he ran away after seeing the police entering the house. This aspect has been brought on record through FIR, panchnama and oral evidence of the witnesses. This further supports the case of the prosecution that the said house was in possession of the petitioner. It therefore, cannot be said that the prosecution has failed to prove that the muddamal articles were not found from in the possession of the petitioner.

No other point has been raised.

11. Learned APP, Mr K G Sheth has drawn my attention to the statement of the petitioner recorded under section 313 of the Code and has argued that the petitioner had not stated in so many words that the house in question did not belong to him or that it was not in his possession. Apart from the aforesaid facts of the case, the two courts below have recorded concurrent finding of fact that the said house was in possession of the petitioner and the presence of the petitioner at the relevant point of time has substantiated the said aspect of the case. In above view of the matter, the point raised on behalf of the petitioner does not support the defence at all.

12. This is after all a revisional jurisdiction and the powers of this court exercising revisional jurisdiction are very limited. The court can interfere with the judgments and orders of the trial court only when the appreciation of evidence is found to be illegal and perverse or when the findings of facts are found to be against the weight of evidence on record. In the case before us the findings of facts cannot be treated to be illegal and perverse. In above view of the matter, the two courts below have rightly concluded that the illicit liquor was found from the possession of the petitioner and the petitioner was found in possession of those bottles containing illicit liquors. A point was raised that all the bottles have not been sealed. This would mean that at the best it can be said that the bottle which was sealed contained illicit liquor but the fact

remains that the illicit liquor was found from the possession of the petitioner and there is no dispute that the petitioner did not have any licence or permit to possess such liquor. Therefore, he contravened the provisions of Bombay Prohibition Act and, therefore, the two courts below have rightly concluded that the petitioner was guilty of offence in question and he was rightly convicted and sentenced. There is no illegality committed by the two courts below and, therefore, there is no merit in the revision application and the same deserves to be dismissed.

13. For the foregoing reasons, this revision application is ordered to be dismissed at the admission stage. The judgments and conviction orders recorded by the two courts below are confirmed.

8.3.2002 [D P Buch, J.]

msp